

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

<b>Dawn Matthews,</b>	)	
<b>Challenger,</b>	)	
v.	)	<b>Administrative Hearing</b>
<b>Yvette Alexander,</b>	)	<b>No. 12-03</b>
<b>Candidate for Nomination.</b>	)	<b>Re: Nominating Petition Challenge</b>

**MEMORANDUM OPINION AND ORDER**

This matter came before the District of Columbia Board of Elections (hereinafter “the Board”) on January 31, 2012 and February 2, 2012<sup>1</sup> in response to a challenge filed on January 17, 2012 by Dawn Matthews, a registered voter in the District of Columbia. The challenge was filed to the nominating petition submitted by Yvette Alexander in support of her candidacy to be the Democratic nominee for the office of Ward Seven Member of the Council of the District of Columbia (“the Council”).

The Board members were Deborah K. Nichols, as the presiding Chairman, Devarieste Curry, and Stephen I. Danzansky. Ms. Matthews appeared *pro se*, and was accompanied and assisted by Kemry Hughes, who identified himself as the campaign manager for Tom Brown, another Democratic candidate for the Ward Seven Member of the Council. Ms. Alexander was represented by David Wilmot, Esq., of the law firm Harmon & Wilmot, LLP.

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<sup>1</sup> The Board convened the hearing on January 31, 2012, but decided during a fire drill that disrupted the hearing to continue the matter after one of the Board members indicated that exploring the issues obviously would require more time than previously understood and scheduling conflicts would not allow all of the Board members to devote the requisite time that day. On reconvening, after the fire drill, the Chair explained the decision to continue the hearing, and February 2, 2012 was selected to accommodate the parties’ schedules.

## I. BACKGROUND

On December 12, 2011, Ms. Alexander submitted a nominating petition (“the Petition”) to appear on the ballot as a candidate for the Democratic Party nomination to the office of Ward Seven Member of the Council in the April 3, 2012 Primary Election. The Petition was comprised of 75 sheets and contained a total of 1,384 signatures. The circulator affidavits on the petition sheets indicated that the Petition was circulated by three individuals, all of whom are registered voters in the District of Columbia: George B. Browne, Derek Ford, and James Short.

On January 7, 2012, the Board posted the Petition for public review and inspection for the statutorily prescribed 10-day challenge period.<sup>2</sup> On January 17, 2012, Ms. Matthews filed a challenge to the Petition (“the Challenge”) in which she alleged that 456 signatures were invalid pursuant to one or more grounds specified in the Board’s regulations. In addition, Ms. Matthews claimed that Mr. Browne and Mr. Ford “signed as circulators for petitions that they themselves did not circulate,” and that “there’s evidence of a pattern indicating that a team of circulators were [*sic*] dispatched throughout the ward to gather signatures and, upon the teams’ [*sic*] return, Mr. Browne and/or Mr. Ford would accept the petition sheets, then signing [*sic*] them as if they were the actual circulator(s).” Because it was “not possible to tell which petitions Mr. Browne and Mr. Ford actually circulated (and which petitions others circulated),” Ms. Matthews concluded, “the Board should invalidate all petitions that list Mr. Browne or Mr. Ford as circulator.”

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<sup>2</sup> See D.C. Official Code § 1-1001.08(o)(1)(2011 Repl.).

On January 24, 2012, the Board's Office of the General Counsel conducted a prehearing conference, with all of the parties present, for the purpose of addressing procedural issues, obtaining stipulations, exchanging evidence, and considering any other matters that might help resolve the case expeditiously.

On January 31, 2012, the Board commenced a hearing to resolve the Challenge<sup>3</sup> which, as previously explained, was continued until February 2, 2012. During the hearing, the Board heard testimony from Mr. Browne, Mr. Ford, and Mr. Hughes. In addition to witness testimony, the Board reviewed and considered numerous Petition sheets, a petition sheet for Peter Shapiro for the At-Large Member of the Council (also signed by Mr. Ford as circulator), one affidavit and two written and signed statements<sup>4</sup>. The hearing was concluded on February 2, 2012.

## II. APPLICABLE LAW

In order to appear on the primary election ballot as a candidate for nomination to the office of Ward Member of the Council, an individual must secure the signatures of 250 duly registered voters who are affiliated with the same party as the candidate and who reside in the same ward as the candidate.<sup>5</sup> While "the Board is authorized to accept any nominating petition for a candidate for any office as bona fide with respect to the qualifications of the signatures" if the nominating petition is posted and goes unchallenged, once a challenge has been filed, the Board examines each challenged signature to determine its validity. Section 1607.5 of the Board's regulations outlines the

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<sup>3</sup> See D.C. Official Code §1-1001.08(o)(2)(2011 Repl.).

<sup>4</sup> Ms. Matthews submitted the signed statements and the affidavit. One of the other signed statements purported to be an affidavit, but was neither an affidavit nor a declaration signed under penalty of perjury. The Board explained the deficiencies to Ms. Matthews, and she submitted a properly executed affidavit on Friday, February 3, 2012.

<sup>5</sup> See D.C. Official Code § 1-1001.08(i)(2)(2011 Repl.).

grounds upon which nominating petition signatures may be invalidated. That section provides that:

A signature shall not be counted as valid in any of the following circumstances:

- (a) The signer's voter registration was designated as inactive on the voter roll pursuant to D.C. Official Code § 1-1001.07(j)(2) at the time the petition was signed;
- (b) The signer, according to the Board's records, is not registered to vote at the address listed on the petition at the time the petition was signed;
- (c) The signer is not a duly registered voter;
- (d) The signature is not dated;
- (e) On a petition to nominate a candidate in a primary election, the signer is not registered to vote in the same party as the candidate at the time the petition is signed;
- (f) On a petition to nominate a candidate from a ward, school district or single-member district, the signer is not duly registered in the ward, school district or single-member district from which the candidate seeks election at the time the petition is signed;
- (g) The petition does not include the printed or typed address of the signer;
- (h) The petition does not include the printed or typed name of the signer where the signature is not sufficiently legible for identification; or
- (i) The circulator of the petition sheet was not a registered qualified elector of the District of Columbia at the time the petition was signed.<sup>6</sup>

Pursuant to District law, a nominating petition circulator must complete and sign a circulator's affidavit of certification for each petition sheet that he or she circulates. This affidavit, which is "made under penalty of perjury," must contain the representations that the circulator is a registered voter in the District, and that he or she has:

- (A) Personally circulated the petition;
- (B) Personally witnessed each person sign the petition; and
- (C) Inquired from each signer whether he or she is a registered voter in the same party as the candidate and, where applicable, whether the signer is

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<sup>6</sup> D.C. Mun. Regs. tit. 3 § 1607.5 (2007).

registered in and a resident of the ward from which the candidate seeks election.<sup>7</sup>

Additionally, “[s]ignatures appearing on nominating petition sheets shall not be counted as valid unless all required information is provided by the circulator in his or her signed affidavit.”<sup>8</sup>

### **III. THE CHALLENGE**

#### **A. Challenges to Individual Signatures**

As noted above, Ms. Matthews challenged 456 of the 1,383 signatures submitted in the Petition. The Registrar reviewed the challenges, and concluded that 428 of them were valid, and that the remaining 28 were invalid. Accordingly, the first phase of the Challenge analysis indicated that the Petition contained 955 signatures that were either presumed valid or determined to be valid – 705 more signatures than the minimum number required in order for Ms. Alexander to gain ballot access.

#### **B. Challenge to Circulator Affidavits**

Notwithstanding the Registrar’s finding that the Petition contained 955 valid signatures, the resolution of the Challenge was far from complete; Ms. Matthews had also charged that Mr. Browne and Mr. Ford signed circulator affidavits on Petition sheets that had actually been circulated by others in violation of District of Columbia law, and that this activity warranted the rejection of all Petition sheets associated with these circulators. This aspect of the Challenge, which concerned not merely the genuineness of the Petition signatures but also the manner in which they were obtained, was not capable of resolution by way of a mere review of petition sheets. Instead, this claim required the Board to

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<sup>7</sup> D.C. Official Code § 1-1001.08(b)(3)(2011 Repl.).

<sup>8</sup> D.C. Mun. Regs. tit. 3 § 1600.6 (2007).

consider testimonial, documentary, and any other evidence available that would shed light on the Petition circulation process. It should be added that the Registrar's finding that 456 of the signatures were invalid was not contested at the Board hearing.

#### **IV. THE HEARING**

As stated above, three witnesses testified at the hearing: circulators Mr. Ford and Mr. Browne, and Mr. Hughes, who also testified as a fact witness. During the hearing, Mr. Ford testified under oath that he circulated the Petition on a full-time basis throughout the circulation process. He stated that he collected signatures mainly at commerce centers, Metro stops, and other "high-volume" locales in Ward Seven where he knew he would find large numbers of registered voters who likely resided in that ward. He also testified that he personally observed and witnessed every signature on the Petition sheets for which he signed a circulator affidavit.

Mr. Ford further testified that he used "assistants" in the circulation process. These individuals circulated Petition sheets and submitted them ultimately to him, leaving the circulator affidavits unsigned. Mr. Ford further testified that he understood, based upon "rumors" circulating about the petition circulation process in the District that the use of assistants in this manner was permissible.

Mr. Ford also testified that, in late November or early December 2011, he contacted Mr. Wilmot, legal counsel for the Yvette Alexander campaign, on, *inter alia*, the issue of whether the use of assistants was, in fact, appropriate, and that he was advised that he and other circulators should only submit signatures they had personally observed and witnessed.<sup>9</sup> Finally, Mr. Ford testified that, as a result of this counsel, the

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<sup>9</sup> Mr. Ford initially testified with a certainty that he contacted "counsel" and the time frame within which he contacted "counsel," but upon questioning that raised issues to the veracity of some of his statements, he began to equivocate.

campaign discarded all Petition sheets that had been circulated by the assistants, and submitted to the Board only those signatures that the circulators had personally observed and witnessed. Ms. Matthews did not present any probative evidence to rebut Mr. Ford's claim that only signatures that the circulators had personally observed and witnessed were submitted to the Board.

Like Mr. Ford, Mr. Browne testified under oath that he circulated the Petition on a full-time basis in areas in Ward Seven that would yield a high-volume of potential signers. His days, he testified, "went from 7:00 a.m. to 7:00 p.m." He also testified that he personally observed and witnessed every signature on the Petition sheets for which he signed a circulator affidavit.

Ms. Matthews sought to impeach Mr. Browne by producing a statement from a signatory named Vincent Cook. In this statement, Mr. Cook, who Ms. Matthews acknowledged is her fiancé, declared that, contrary to the appearance of his signature on a Petition sheet bearing a circulator affidavit signed by Mr. Browne, Mr. Browne was not the circulator who collected his signature.<sup>10</sup>

Finally, Mr. Hughes summarized Ms. Matthews' challenge on her behalf, during which he questioned the circulators' ability to collect the number of signatures the campaign submitted in the period of time the Petition had been circulated. He also testified as a fact witness, during which he described his own experience as a circulator and that of teams that had worked for him. He used his personal experience as a basis to question the probability that either Mr. Ford or Mr. Browne could have collected the number of signatures each represented he had collected.

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<sup>10</sup> Ms. Matthews produced two other documents, a statement from Helen F. Caroline-Clark, and an affidavit from Gregory Stewart. Neither of these documents contained any information that rebutted the sworn testimony of either Mr. Browne or Mr. Ford.

## V. DISCUSSION

In *Williams v. District of Columbia Board of Elections and Ethics*,<sup>11</sup> the District of Columbia Court of Appeals addressed the importance of petition circulator affidavits.

The Court noted that:

Defects either in circulation or signatures deal with matters of form and procedure, but the filing of a false affidavit by a circulator is a much more serious matter involving more than a technicality. The legislature has sought to protect the process by providing for some safeguards in the way nomination signatures are obtained and verified. Fraud in the certification destroys the safeguards unless there are strong sanctions for such conduct such as voiding of petitions with false certifications.<sup>12</sup>

The significance of the circulator affidavit is heightened in the context of nominating petitions. When parties file petitions in support of initiative, referendum, or recall measures, the Board examines each petition sheet line by line to ascertain if the signer is a registered voter, and performs a random statistical sampling of the signatures to determine if the signatures are valid.<sup>13</sup> Dissimilarly, the Board accepts signatures on nominating petitions as *bona fide* and presumes them to be valid because the circulator has attested that he or she has “inquired from each signer whether he or she is a registered voter” and “personally witnessed each person sign.” The nominating petition circulator, then, “performs functionally the same role the Board itself fills in verifying signatures on an initiative or referendum petition.”<sup>14</sup> In essence, the circulator becomes a citizen-officer in the nominating process.

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<sup>11</sup> 804 A.2d 316 (D.C. App. 2002) (“*Williams*”).

<sup>12</sup> *Id.* at 319 (citing *Brousseau v. Fitzgerald*, 675 P. 2d 713, 715 (Ariz. 1984)).

<sup>13</sup> The random sample procedure is conducted to determine, with the required confidence level of ninety-five percent (95%), whether or not a sufficient number of valid signatures of registered voters are contained in the petition.

<sup>14</sup> *Williams* at 319.



In light of the importance of the role of the circulator affidavit, it should come as no surprise that the Board has not hesitated to discard signatures contained on petition sheets that have been determined to contain defective or unreliable circulator affidavits. In *Brizill v. Williams*,<sup>15</sup> the Board rejected all nominating petition signatures collected by a group of three individuals because it could not determine the veracity of their circulator affidavits. The petition sheets at issue were replete with forgeries and other defects, and the circulators, subpoenaed to answer questions about their roles in the petition process, categorically refused to answer questions by asserting their Fifth Amendment privilege. And in *Drake v. Citizens Committee for the D.C. Video Lottery Terminal Initiative of 2004*,<sup>16</sup> the Board threw out all initiative petition signatures on petition sheets submitted by a professional petition circulation outfit that was determined to have encouraged and paid individuals to forge circulator affidavits and to sign circulator affidavits on petition sheets that they did not circulate.

In each of these instances, there was substantial evidence of wrongdoing that warranted grave concern about the circulator affidavits at issue, as well as the rejection of the petition sheets containing those affidavits. That is not the case here. Each of the circulators whose circulating actions were questioned testified under oath that they personally observed and witnessed each signature on the Petition sheets for which they signed circulator affidavits. Furthermore, Mr. Ford took pains to testify under oath that all signatures that he and the other circulators did not personally observe and witness were not submitted to the Board. As the challenger, Ms. Matthews bore the affirmative duty to establish that all of the petition sheets circulated by Mr. Browne and Mr. Ford

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<sup>15</sup> Board Administrative Order No. 02-016 (July 29, 2002).

<sup>16</sup> Board Administrative Order No. 04-020 (August 13, 2004).

should be discarded<sup>17</sup> or, in the alternative, produce a sample of sufficient size and weight such that a pattern or practice could be inferred to support her claim that “there’s evidence of a pattern indicating that a team of circulators were [sic] dispatched throughout the ward to gather signatures...” She did not meet that burden. As a result, there is no basis upon which the Board may invalidate those signatures submitted by Mr. Browne and Mr. Ford beyond those rejected as a result of the challenges to individual signatures.

The Board notes that although it did not find substantial evidence of a “pattern or practice” of wrongdoing sufficient to compel invalidating all signatures submitted by Mr. Browne and Mr. Ford, such should not be misinterpreted as approval of either the sloppy nature of the Alexander campaign’s signature collection process, or the inability of Mr. Ford, the campaign’s manager and treasurer, to explain several deficiencies which ultimately raised questions as to whether the Board should trust the veracity of his testimony about the procedure he followed in discarding the Petition sheets that were purportedly not submitted to the Board. The Board was troubled by the campaign’s apparent preference of quantity over quality which was exposed by Mr. Ford’s testimony. The Board expects all petition signature gathering campaigns in the District of Columbia to strictly adhere to law and procedure, and to exercise a standard of care, responsibility, and integrity that reflects an understanding of the importance of the ballot access process.

The Board can nevertheless decide this matter without reaching a definitive decision regarding Mr. Ford’s credibility of one of the campaign’s witnesses’ testimony

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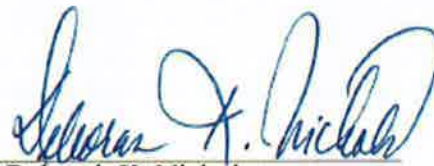
<sup>17</sup> See D.C. Mun. Regs. tit. 3 § 424.1 (2007).

given the lack of substantial evidence offered by Ms. Matthews to the contrary, and given further the qualifying number of signatures attested to by the second witness.

**VI. CONCLUSION**

Based on the foregoing, it is hereby **ORDERED** that the Challenge is denied, and that Yvette Alexander be granted access to the April 3, 2012 Primary Election ballot as a candidate for nomination for the office of Ward Seven Member of the Council.

February 6, 2012



Deborah K. Nichols  
Chair, Board of Elections

Devarieste Curry  
Member, Board of Elections

Stephen I. Danzansky  
Member, Board of Elections

